## REMARKS/ARGUMENTS

The Office Action August 14, 2007 has been carefully reviewed and its contents considered. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the foregoing amendments and the following remarks.

Turning first to the indefiniteness rejection of claim 2, the claim has been amended to eliminate any alternative language, and to recite the safety lever can be swiveled vertical to the swiveling axis. It is believed that this amendment overcomes the rejection to claim 2.

Turning next to the art rejections, the indication in the Official Action that claim 9 is allowed is noted with appreciation.

Claims 1-5 were rejected as being anticipated by German Patent Document 1,772,882 (German '882), or by U.S. Patent No. 5,988,711 (Toma). These rejections are respectfully traversed..

It is respectfully submitted that German '882 does not teach or suggest the invention recited in independent claim 1, including a door opener with a safety lever that holds the locking lever in the locking position and, at the same time, pivots about its center of gravity. To illustrate the concept of this important difference, attached to this amendment as Appendix A are drawings comparing the overall operation of the safety lever recited in claim 1 with the safety lever of German '882 (as well as with Toma as discussed further below). In these attached schematic drawings, the center of gravity (CG) and the swiveling axis (SA) of the prior art designs as well as the design recited in claim 1 are depicted. In the arrangement recited in claim 1, the center of gravity CG corresponds to the swiveling axis SA. This is not true in either German '882 or Toma.

Turning in more detail to Toma, it is noted that the safety lever 10 of Toma in fact pivots about its center of gravity is different from the safety lever recited in claim 1. The second safety lever 10 of Toma does not hold the locking lever (catch lever 3) in the locking position, as recited in claim 1. In contrast, the second safety lever 10 of Toma is arranged to block the first safety lever 10 (see, for example, FIG. 1 of Toma). Thus, the second safety lever 10 of Toma is different from the recited safety lever of claim 1.

Turning next to German '882, the Office Action is understood presumably to contend that the safety lever of German '882 can be pivoted about its "geometric centroid" as the center of gravity. However, it is respectfully submitted that this leap is based on hindsight due to Applicants' disclosure and is thus impermissible. Applicants have reviewed German '882, and first of all does not understand where in this reference the "geometric centroid" is explained in this regard. Further, the Office Action is not understood to illustrate a location of such "geometric centroid." Moreover, claim 1 recites the "center of gravity." By way of example shown in Appendix A, the safety lever 7 of German '882 is not believed to be positioned in its center of gravity. In fact, the swiveling axis SA and the center of gravity CG in German '882 deviate from each other. Accordingly, the conclusion in the Office Action that one skilled in the art would recognize the safety lever of German '882 is "inherently" pivoted about its center of gravity is believed to be based on hindsight and not any teaching or suggestion from German '882. This is particularly true since the center of gravity and the swiveling axis in German '882 deviate from each other. Thus, nothing in German '882 is understood to suggest the claimed arrangement where these two items are in the same place. Nothing in German '882 is understood to make any suggestion that positioning the safety lever at its center of gravity would

lead to any advantages. The center of gravity and its selection of positioning are not believed to be explained in German '882 at all.

Turning next to Toma, Applicants recognize that the claims do not exclude a provision of additional parts. However, it is believed that Toma teaches the concept of a door opener that is fundamentally different in structure and operation to the door opener recited in claim 1. The second safety lever 10 of Toma, while it may be pivotable about its center of gravity, does not perform the other recited aspect of locking the locking lever 3. In fact, the second safety lever 10 of Toma does not lock the locking lever 3. In contrast to the invention recited in claim 1, the second safety lever locks the first safety lever, such as is illustrated in FIG. 1 of Toma. Thus, the door opener of Toma requires the simultaneous use of two safety levers and the safety lever that is pivotable about its center of gravity is used to lock the first safety lever. Claim 1, in contrast to this arrangement, recites a safety lever that is pivotable about its center of gravity and at the same time directly locks the locking lever in the locking position.

Accordingly, a significant feature of the invention recited in claim 1 is the provision of a safety lever that is unsusceptible to vibration (due to the positioning of its center of gravity), and that also is used to directly lock the locking lever. This is not accomplished by the second safety lever 10 of Toma, which is pivot mounted in its center of gravity, but is constructed as a "low mass lever" (column 2, lines 15 and 16) that arrests the first safety lever 6. The low mass second safety lever 10 described in Toma is believed completely inapplicable to directly locking the locking lever in the locking position, for example, due to the fact that it would simply break if forces that are exerted on the locking lever (for example in the case of a violent attempt to open the door), are directly transferred from the locking lever onto the second safety lever. For this reason, Toma discloses the additional use of the more stable first safety lever 6. But, in contrast

to the invention recited in claim 1, the first safety lever of Toma is not positioned in its center of gravity, thus necessitating this entire part to be used.

In view of the above discussion, it is believed that neither German '882 nor Toma can be said to anticipate the invention recited in claim 1. The dependent claims are believed allowable at least for these reasons. Further, with respect to claims 6-8, it is respectfully submitted that Bashford does not remedy the deficiencies of the primary references, and thus the dependent claims are allowable also at least for the reasons given above.

Entry of this amendment after final rejection is respectfully requested. The sole amendment to the claim relates to a formal matter identified by the Examiner. Further consideration of the present arguments is respectfully requested.

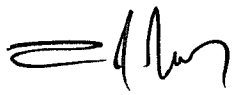
The Examiner is invited to contact the undersigned in an effort to resolve any matter still outstanding before issuing another action.

In view of the foregoing, reconsideration and allowance of the application are believed in order, and such action is earnestly solicited. Should the Examiner believe that a telephone conference would be helpful in expediting prosecution of the application; the Examiner is invited to telephone the undersigned at 202-861-1696.

Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036 with reference to Docket No. 87305.0042.

Respectfully submitted,

BAKER & HOSTETLER LLP



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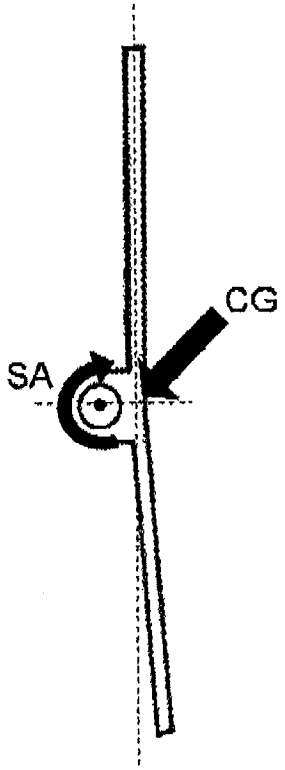
APPENDIX A

CG = CENTER OF GRAVITY ( -+- )

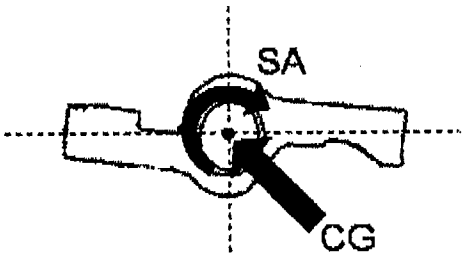
SA = SWIVELING AXIS AND ONE EXEMPLARY SWIVELING DIRECTION ( )

Claim 1

SAFETY LEVER 7 of
DE 1 772 882 U1

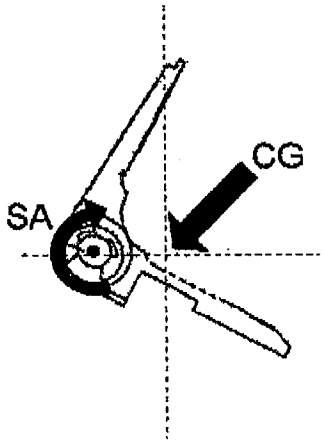



SA ≠ CG




**SA = CG**

FIRST SAFETY LEVER 6 of
US 5,988,711 A




SA ≠ CG